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Human Rights Committee

Concluding observations on the second periodic report of Tajikistan

Addendum

Information received from Tajikistan on follow-up to the concluding observations*

[Date received: 30 March 2015]

1. Pursuant to rule 71, paragraph 5, of the rules of procedure of the Human Rights Committee concerning the provision of relevant information on its implementation of the Committee's recommendations in paragraphs 16, 18 and 23 of the concluding observations on the second periodic report of Tajikistan, Tajikistan wishes to convey the following.

Information on the implementation of the recommendations of the Committee in paragraph 16

2. With regard to the recommendation in paragraph 16 of the concluding observations, Tajikistan notes that matters involving detention and preventive measures are regulated by section 4 of the Code of Criminal Procedure (Coercive measures). Chapter 11 of the Code deals with detention. In accordance with article 92, paragraph 2, of the Code, a person may be detained before criminal proceedings are initiated. The decision to initiate criminal proceedings must be taken by the criminal prosecution authority within 12 hours of the arrest. If criminal proceedings are dropped or no decision is taken to institute criminal proceedings within that time frame, the detainee must be released. The procedure for detaining a suspect is regulated by article 94 of the Code of Criminal Procedure, which provides that, once an arrested person has been taken into custody, an official must draft a report within three hours, indicating the grounds, place and time (date and hours) of the arrest, the findings of personal searches and the time that the report was filed. The report is made known to the detainee, who is read his or her rights, including the right to retain counsel and to testify in the presence of the counsel, a fact which is duly noted in the report. The report is signed by the official who drafted it and the detained person. The person conducting the initial inquiry or investigator must submit a written report on the detention within 24 hours.

* The present document is being issued without formal editing.

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3. Under article 108 of the Code of Criminal Procedure, minor suspects, accused persons or defendants may be released as a preventive measure under the supervision of their parents or other relatives, guardians or persons entrusted with their care, or representatives from the special children's institution in which they reside.

4. Therefore, it can be concluded that the rights of detained persons are duly protected under national criminal procedural law and fully meet international standards.

5. In addition, it should be noted that on 14 July 2013, the plenum of the Supreme Court of Tajikistan issued a ruling on the application by the courts of legislation relating to the imposition of preventive measures in the form of remand in custody, house arrest and the extension of the period of remand in custody or house arrest. That ruling provides the criminal prosecution authorities, courts and judges with a clarification of the legal provisions regulating detention, the imposition of preventive measures and the procedure for examining such cases. It states the need to observe constitutional rights and notes that the right to freedom is a supreme value. Life, honour, dignity and other inherent human rights are inviolable and no one may be detained or held in custody without legitimate grounds.

6. According to the Office of the Procurator-General, in the first half of 2014 detention orders were issued with the agreement of prosecutors and authorization of the courts with respect to 1,363 suspects. Investigators issued release orders for 93 detained persons.

7. The national law enforcement bodies have taken measures to ensure that detainees are informed of their rights and the grounds for their detention, streamlined the procedures for the registration of persons in detention facilities and provided detainees with immediate access to a lawyer and a doctor. According to the State Financial Audit and Anti-Corruption Agency, when a detained person is suspected of corruption, the relevant units of the Agency must draw up an arrest report within three hours, specifying the grounds, place and time of the arrest, in accordance with article 94 of the Code of Criminal Procedure. In addition, the time and place of the arrest must be recorded in a special logbook.

8. Family members or other close relatives of the detained person must also be notified of the detention within 12 hours of the arrest, pursuant to article 100 of the Code of Criminal Procedure. In addition to these important safeguards to ensure the detainee's procedural and other rights, articles 49–53 of the Code of Criminal Procedure provide for the right of the defence counsel to have access to the defendant from the moment of arrest and to freely conduct private interviews with his or her client without any limitation on the number or length of the interviews. Furthermore, the right of detained persons to counsel from the moment of arrest is guaranteed under article 19 of the Constitution.

9. Detainees are guaranteed timely access to medical assistance by either the medical unit of the State Financial Audit and Anti-Corruption Agency or, if necessary, qualified staff called in from other medical institutions in the country.

10. According to the Drug Control Agency under the Office of the Presidency, during the first six months of 2014 a total of 137 persons were held in temporary detention facilities (compared to 72 during the same period in 2013). The rights of detainees and conditions of their detention are protected under articles 91 and 92 of the Code of Criminal Procedure and the guidelines on the organization of the work of duty units and the protection and transfer under escort of arrested and accused persons (No. 44 of 29 May 2000), guidelines on the procedures for the operation and internal order of temporary facilities for the detention of arrested and accused persons and guidelines on the procedure and conditions for the detention of suspects, accused persons and defendants (No. 107 of 3 March 2012). Prior to placement in a temporary detention facility, detained persons are examined by officials from the Drug Control Agency and a medical certificate is drawn up to confirm their state of health. Detainees are entitled to the services of a lawyer and other

rights set out in article 46 of the Code of Criminal Procedure from the moment of their detention.

11. In accordance with legally established procedures, detainees are provided with a lawyer from the moment of arrest. The investigative authorities permit detainees to receive visits from relatives and family members twice a month, with no limitation on the number and length of the meetings. Not a single complaint has been lodged by detainees about violations of their rights or the use of torture.

12. The recommendation to institute an independent mechanism for the inspection of all detention facilities by relevant international humanitarian organizations and/or independent national human rights non-governmental organizations is under consideration.

Information on the implementation of the recommendations of the Committee in paragraph 18

13. With regard to the recommendations in paragraph 18 of the concluding observations, Tajikistan notes that, on 23 June 2007, the Judicial Reform Programme for the period 2007–2010 was adopted by presidential decree and successfully implemented. The measures taken under the Programme include:

- The adoption of the Code of Criminal Procedure;
- The adoption of the Code of Civil Procedure;
- The adoption of the Code of Economic Procedure;
- The transfer of the penal enforcement system to the Ministry of Justice;
- The creation of administrative and family court divisions.

14. The second Judicial Reform Programme for the period 2011–2013, adopted by a presidential decree on 3 January 2011, was also successfully implemented.

15. In his message of 23 April 2014 on the main lines of domestic and foreign policy, the President noted that, in order to develop the country's judicial system, build the professional capacities of judges and enhance the role and position of the courts in ensuring the protection of human rights and freedoms and the legal interests of organizations and institutions, irrespective of their legal and organizational status, a new programme for the judicial system was being drawn up for the following three years, which should be presented to the President by the end of the current year.

16. Work is being carried out on the new Judicial Reform Programme for 2014–2016, which will shortly be submitted to the President.

17. In order to ensure adequate salaries for judges, the monthly salaries of judges of the provincial courts, Dushanbe City Court, military garrison court and city and district economic courts were doubled under presidential decree No. 1126 of 2 August 2011.

18. With regard to the recommendation concerning the development of the procedure and criteria for access to and conditions of membership of the Bar in order to guarantee the independence of lawyers and the creation of a State-subsidized legal aid system for persons in need, it should be noted that there are plans to develop relevant legislation in order to enhance efforts to provide high-quality professional legal aid. In that regard, a working group has prepared a bill on the work of lawyers and the legal profession. In addition, the Ministry of Justice has drafted a policy framework for the provision of legal aid in Tajikistan. The objective of the framework is to define the State policy on free legal aid to citizens and to set out the phases for its preparation and implementation. The framework aims to ensure the right to receive legal aid and judicial protection, as provided for in the Constitution.

Information on the implementation of the recommendations of the Committee in paragraph 23

19. With regard to the recommendations in paragraph 23 of the concluding observations, Tajikistan notes that the right of citizens of Tajikistan to freedom of association is enshrined in the Constitution and other national legislation, in accordance with the International Covenant on Civil and Political Rights. On 12 May 2007 the Voluntary Associations Act was adopted to regulate certain aspects of the work of such associations. Under article 41 of the Act, all voluntary associations established before its entry into force were to be re-registered by 1 January 2008. Associations that have failed to complete the re-registration procedure before that deadline are to lose their status as legal entities and their registration certificates to be annulled by the registration authority.

20. In order to protect the rights and interests of such associations, article 23 of the Act provides that voluntary associations may appeal against any refusal of an application for or delay in registration to the courts. The refusal to register a voluntary association is not an obstacle to reapplying for State registration.

21. Therefore, national legislation does not unduly restrict the freedom of voluntary associations to operate in the country. To ensure the protection of their rights and interests, they are entitled to appeal to the courts without hindrance.